

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-216

June 3, 1998

NORTHERN UTILITIES, INC.,
Request for Approval of Reorganization -
Merger with NIPSCO Industries

ORDER DENYING
CENTRAL MAINE POWER
COMPANY'S PETITION
TO INTERVENE

WELCH, Chairman; Nugent, Commissioner

I. Summary of Order

We deny Central Maine Power Company's (CMP) petition for late intervention in this proceeding.

II. Background

On March 20, 1998, Northern Utilities, Inc. (Northern), filed a request for approval of a reorganization pursuant to 35-A M.R.S.A. 708 to allow for its merger with NIPSCO Industries (NIPSCO), an Indiana corporation. The Commission issued a Notice of Proceeding on April 10, 1998 by procedural order and by publication in newspapers of general circulation. These notices established an intervention deadline of April 27, 1998 and set a prehearing conference for April 29, 1998.

On April 28, 1998, Central Maine Power Company (CMP) asked to be included on the service list for this proceeding as an interested person. The Office of the Public Advocate (OPA) and NIPSCO participated in the prehearing conference and were granted intervention. The parties and Advisory Staff participated in discovery and in joint technical conferences with the New Hampshire Public Service Commission on May 6 and 26, 1998.

On May 19, 1998, CMP submitted its Petition for Late Intervention. CMP states that because it is an electric utility providing service in many of the areas where Northern provides or is authorized to provide natural gas service, "CMP and Northern are direct competitors in energy markets in Maine." Furthermore, CMP petitions on behalf of its affiliate, CMP Natural Gas, which is awaiting authorization to serve in areas in which Northern is authorized to serve. CMP states that its affiliate "is a potential competitor of Northern in the natural gas distribution market." CMP argues that it has determined that full party status is necessary for CMP to adequately represent its interests in this proceeding. Finally, CMP states that it meets the standard for mandatory intervention in this proceeding because it

"is or may be substantially affected by the proceeding" and that no other party can adequately represent its interests. See Chapter 110, Section 720. However, CMP states that, at this early stage of the proceeding, it is unable to provide a statement of the issues that it may seek to address during the proceeding or the evidence or argument that it will submit.

In filings dated May 22, 1998, Northern and NIPSCO objected to CMP's late-filed petition for intervention. Northern argues that CMP fails to give a reason excusing its lateness or its need for increased participation and does not even identify any issues with which it is concerned. Northern argues that CMP is not entitled to mandatory intervention because it fails to demonstrate that it is substantially and directly affected by this proceeding. Northern objects that CMP's participation as a party at this stage of the proceeding will burden the process and outweigh any benefit to granting CMP intervention. NIPSCO echoes these points and notes that, at best, CMP Natural Gas is a *potential* competitor because it has not yet been authorized to serve within Northern's authorized area.

CMP did not file responsive comments to these objections on May 28th as allowed by Chapter 110, section 420(c).

A stipulation executed by OPA, Northern and NIPSCO was filed on May 29, 1998 and is scheduled for hearing and decision on June 3, 1998.

III. Discussion

Chapter 110, section 723(a) allows the Commission to deny intervention of any person filing a timely petition for intervention under section 720 if they fail to show a direct and substantial interest in the proceeding. That section also allows the Commission to deny or limit the intervention of any person filing an untimely petition to intervene under section 720. The Commission may deny or limit intervention of any person petitioning for intervention as a matter of discretion for any reason, including the consideration of the petitioner's likely contribution to the development of relevant issues and the timeliness of the petition. Id.

First, we note that it is not obvious that CMP is entitled to intervention as of right pursuant to section 720 of Ch. 110. In fact, given our prior intervention rulings, it is more likely that as a competitor with a largely financial stake in this matter, CMP (or CMP on behalf of its affiliate, CMP Natural Gas) would not be entitled to mandatory intervention. Even assuming it were so entitled, we may deny an untimely petition as circumstances warrant. Finally, we may allow intervention as a

discretionary matter if we see value in doing so. Ch. 110, sections 721 and 723(a).

Here, CMP's petition is clearly untimely. Several weeks ago, CMP chose to participate in this case only as an interested person. Since that time the parties have engaged in discovery and technical conferences toward the goal of resolving this matter within the established schedule. A stipulation among the parties has now been filed and is before us for a determination on the merits.

We cannot see how CMP's participation at this late date would outweigh the disruption that its intervention would cause at this time. We are about to consider a stipulation that the parties to this case have worked out over the last several weeks.

In its petition, CMP states that it cannot indicate what issues or contribution it would make. CMP petition at 2, para. 5. This gives us no basis to determine that allowing late-intervention would add value to this proceeding. The fact that CMP did not articulate more specific issues suggests that it does not currently have issues or evidence that it wishes to bring forth for our consideration. We choose not to delay the expeditious consideration of the pending stipulation or jeopardize possible resolution of this matter based on the thin offering that CMP makes in its petition.

Accordingly, we deny CMP's petition to intervene because: 1) it is untimely, 2) it does not state an adequate basis for intervention, and 3) it does not articulate any issues or evidence that it would address.

Dated at Augusta, Maine this 3rd day of June, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.